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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,970	12/04/2001	Dale Kempf	RAR102.05	1804

7590 08/12/2004

EXAMINER
TANNER, HARRY B

ART UNIT	PAPER NUMBER
3744	

Richard A. Ryan
RYAN & ENGNATH
Suite 104
8469 N. Millbrook
Fresno, CA 93720

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/006,970	KEMPF ET AL.	
	Examiner	Art Unit	
	Harry B. Tanner	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 March 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-43 and 57-68* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *57-68* is/are allowed.

6)☒ Claim(s) *1-6,9-11,13,15-19,32,33,35 and 37* is/are rejected.

7)☒ Claim(s) *7,8,12,14,20-31,34,36 and 38-43* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 10, 11, 13, 15-19, 32, 33, 35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters in view of Weber. Peters shows a water control arrangement in which there is a thermally actuated by-pass (Fig. 2) mounted beneath hot and cold operating valves 7, 9. Weber shows a fixture 180-1 in which the operating valves 186-1 and 182-1 and a by-pass 194 are within the fixture (note col. 5, lines 34, 35, "-control device may be incorporated directly in the structure of a set of faucets"). In order to obtain a unitary easily installed unit it would have been obvious to make Peter's arrangements into a unitary fixture in view of the teachings of Weber.

Claims 4-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters in view of Weber as applied to claim 1 above, and further in view of admitted prior art of applicant's Figure 2. In order to provide a commercially known thermal actuator it would have been obvious to use the wax actuator of Figure 2 in Peters.

Claims 7, 8, 12, 14, 20-31, 34, 36 and 38-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 57-68 are allowed.

Applicant's arguments and the Rule 132 Declaration of applicant Dale Kempf filed on March 29, 2004 have been fully considered but they are not persuasive. In response to the argument based upon the age of the references, contentions that the reference patents are old is not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. In re Neal, 179 USPQ 56 (CCPA 1973). In response to the argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969. In this case, both Peters and Weber are directed to by-pass means between the hot and cold supply lines of a faucet. Weber teaches that such a by-pass may be incorporated directly in the structure of the faucet. It is the examiner's position that the teachings of Weber would clearly suggest to one of ordinary skill in the art that the by-pass of Peters could be incorporated directly in the structure of the faucet.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Harry B. Tanner
Primary Examiner

Harry Tanner
August 6, 2004
703-308-2622